

FILED

JUL 27 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DENNIS R. PENFIELD,

Defendant - Appellant.

No. 05-30374

D.C. No. CR-04-00165-JLQ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Justin L. Quackenbush, Senior Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Dennis R. Penfield appeals from his guilty plea conviction and 240-month sentence imposed for possession with intent to distribute a substance containing a detectable amount of methamphetamine, possession with intent to distribute more

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

than 5 grams of methamphetamine and possession with intent to distribute more than 50 grams of methamphetamine, all in violation of 21 U.S.C. §§ 841(a)(1), (b)(1), and 851.

We decline to review Penfield's ineffective assistance of counsel claim because such claims are generally inappropriate on direct appeal. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003) (stating that ineffective assistance of counsel is more properly raised on collateral attack under 28 U.S.C. § 2255, unless the record is sufficiently developed or there is an obvious denial of adequate representation).

We dismiss Penfield's challenge to his sentence in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000) (stating that an appeal waiver is valid when it is entered into knowingly and voluntarily); *see also United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (holding that the changes in sentencing law imposed by *United States v. Booker*, 125 S. Ct. 738 (2005), did not render waiver of appeal involuntary and unknowing).

DISMISSED.